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26 **UNITED STATES DISTRICT COURT**
27 **CENTRAL DISTRICT OF CALIFORNIA**

28
19 GINA CARANO,
20 Plaintiff,
21 v.
22 THE WALT DISNEY COMPANY,
23 LUCASFILM LTD, LLC, and
24 HUCKLEBERRY INDUSTRIES
25 (US), INC.,
26 Defendants.

27) Case No.: 2:24-cv-01009-SPG-SK
28)
) PLAINTIFF'S RESPONSE TO
) DEFENDANTS' MOTION TO
) CERTIFY FOR INTERLOCUTORY
) APPEAL UNDER 28 U.S.C. § 1292(b)
) AND STAY OF PROCEEDINGS;
) MEMORANDUM OF POINTS AND
) AUTHORITIES [DOC. 57]
) Date: September 25, 2024
) Time: 1:30 p.m.
) Judge: Hon. Sherilyn Peace Garnett
) Courtroom: 5C

1 TABLE OF CONTENTS

2 TABLE OF AUTHORITIES	ii
3 INTRODUCTION	1
4 LEGAL STANDARD.....	2
5 ARGUMENT	2
6 I. The Court’s Order Denying Defendants’ Motion to Dismiss Did	
7 Not Decide a Controlling Question of Law.	4
8 II. There is No Substantial Ground for Difference of Opinion on the	
9 Merits of Defendants’ First Amendment Defense at the Motion to	
10 Dismiss Stage.	4
11 A. The <i>Dale</i> Deference Standard Requires Defendants to	
12 Present Actual Facts to Support Their First Amendment	
13 Claim.	5
14 B. <i>Redgrave</i> Does Not Support Defendants’ Asserted Defense.....	7
15 C. Defendants Misinterpret the Court’s Order Regarding	
16 Potential Relief for Their Violation of California Law.	9
17 D. Defendants Again Misinterpret the Court’s Order Regarding	
18 the Application of the First Amendment in the Employment	
19 Context.	10
20 III. Interlocutory Review and a Stay of Proceedings Would	
21 Substantially Delay Resolution of the Issues Presented by the	
22 Complaint.	11
23 A. Immediate Appellate Review Would Not Resolve the Issues	
24 in the Case.	11
25 B. A Stay of the Proceedings is Not Justified.....	11
26 CONCLUSION.....	13
27 CERTIFICATE OF COMPLIANCE.....	15

1 TABLE OF AUTHORITIES

2 Cases	Page(s)
3 <i>303 Creative LLC v. Elenis</i> , 4 600 U.S. 570 (2023).....	5
5 <i>Ams. for Prosperity Found. v. Bonta</i> , 6 594 U.S. 595 (2021).....	13
7 <i>Associated Press v. NLRB</i> , 8 301 U.S. 103 (1937).....	8
9 <i>Boy Scouts of America v. Dale</i> , 10 530 U.S. 640 (2000).....	5, 6, 10
11 <i>Cipollone v. Liggett Group, Inc.</i> , 12 505 U.S. 504 (1992).....	9
13 <i>Claybrooks v. Am. Broad. Cos., Inc.</i> , 14 898 F. Supp. 2d 986 (M.D. Tenn. 2012).....	10
15 <i>Cohen v. Cowles Media Co.</i> , 16 501 U.S. 663 (1991).....	1
17 <i>Durnford v. MusclePharm Corp.</i> , 18 907 F.3d 595 (9th Cir. 2018).....	14
19 <i>Green v. Miss United States of America, LLC</i> , 20 52 F.4th 773 (9th Cir. 2022)	5, 6, 10
21 <i>Hishon v. King & Spalding</i> , 22 467 U.S. 69 (1984).....	1
23 <i>Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.</i> , 24 515 U.S. 557 (1995).....	10
25 <i>ICTSI Or., Inc. v. Int'l Longshore & Warehouse Union</i> , 26 22 F.4th 1125 (9th Cir. 2022)	2, 4
27 <i>In re Cement Antitrust Litig. (MDL No. 296)</i> , 28 673 F.2d 1020 (9th Cir. 1981)	2
29 <i>McDermott v. Ampersand Publishing, LLC</i> , 30 593 F.3d 950 (9th Cir. 2010).....	8
31 <i>Moody v. NetChoice, LLC</i> , 32 144 S. Ct. 2383 (2024)	4

1	<i>Moore v. Hadestown Broadway Limited Liability Co.</i> , -- F. Supp. 3d --, No. 23-cv-4837 (LAP), 2024 WL 989843 (S.D.N.Y. Mar. 7, 2024)	7, 10
2		
3	<i>New York Times Co. v. Sullivan</i> , 376 U.S. 254 (1964).....	9
4		
5	<i>Passaic Daily News v. NLRB</i> , 736 F.2d 1543 (D.C. Cir. 1984).....	8
6		
7	<i>Perry v. Schwarzenegger</i> , 591 F.3d 1147 (9th Cir. 2010).....	13
8		
9	<i>Redgrave v. Boston Symphony Orchestra, Inc.</i> , 855 F.2d 888 (1st Cir. 1988).....	8
10		
11	<i>Roberts v. U.S. Jaycees</i> , 468 U.S. 609 (1984).....	5
12		
13	<i>Rowell v. Sony Pictures Television, Inc.</i> , No. LA CV15-02442 JAK (AGRx), 2016 WL 10644537 (C.D. Cal. June 24, 2016).....	7, 10
14		
15	<i>SEC v. Criterion Wealth Mgmt. Ins. Servs., Inc.</i> , No. 2:20-CV-01402-SPG-JEM, 2023 WL 2372062 (C.D. Cal. Feb. 1, 2023).....	2
16		
17	<i>Tucker v. Faith Bible Chapel Int'l</i> , 36 F.4th 1021 (10th Cir. 2022)	11
18		
19	<i>U.S. Rubber Co. v. Wright</i> , 359 F.2d 784 (9th Cir. 1966).....	2
20		
21	Statute	
22	28 U.S.C. § 1292(b)	1, 2, 4
23		
24	Other Authorities	
25	Walter Savage Landor, <i>Imaginary Conversations</i> (London, J.M. Dent & Co. 1891).....	1
26		
27	Order Denying Defs.' Mot. to Dismiss, <i>Beneker v. CBS Studios, Inc.</i> , No. 2:24-cv-01659-JFW-SSC (C.D. Cal. Aug. 14, 2024), ECF No. 60.....	7
28		

INTRODUCTION

“Delay in justice is injustice.” 2 Walter Savage Landor, *Imaginary Conversations* 188 (London, J.M. Dent & Co. 1891). Even so, Defendants, The Walt Disney Company, Lucasfilm Ltd., LLC, and Huckleberry Industries (US), Inc. (collectively, “Defendants”) again seek relief and a delay from this Court based on a false premise—namely, that they are categorically immune from state anti-discrimination laws because they make expressive art. Mot. 1. Yet, as this Court found in denying their Motion to Dismiss based on the same argument, “[i]t is ‘well-established’ … that ‘generally applicable laws do not offend the First Amendment simply because their enforcement’ have incidental effects on speaker’s First Amendment rights.” Order Denying Defs.’ Mot. to Dismiss 10 n.5 (“Order”) (Doc. 45) (quoting *Cohen v. Cowles Media Co.*, 501 U.S. 663, 669 (1991) (collecting cases)). The Court also held that “[a] party’s claim that application of a generally applicable law ‘would infringe [its] constitutional rights of expression or association’ must be supported by some *showing* that compliance with the law would somehow ‘inhibit[]’ its expressive association.” *Id.* at 13 (quoting *Hishon v. King & Spalding*, 467 U.S. 69, 78 (1984)) (emphasis added).

Moreover, of particular pertinence to Defendants’ current motion, this Court found that there were no facts (at least at this stage) to support their claim (1) “that Plaintiff’s continued employment by Defendants would inhibit or intrude upon Defendants’ rights to expressive association,” *id.* at 14, (2) that Defendants “employ public-facing actors for the purpose of promoting the ‘values of respect,’ ‘decency,’ ‘integrity,’ or ‘inclusion,’” *id.*, or (3) “that Plaintiff’s ‘presence as a prominent actor on *The Mandalorian* interfered with [Defendants’] choice not to produce a show associated with her beliefs,” *id.* at 20. Nothing has changed since then and, not surprisingly given the case’s procedural posture, Defendants still do not offer any evidence to support their asserted First Amendment defense. Because the Court’s order rests on a dispute over the facts of the case—that is, what is alleged in the

1 Complaint versus what Disney simply asserts—the case is not proper for
2 certification under 28 U.S.C. § 1292(b). Defendants’ Motion to Certify for
3 Interlocutory Appeal Under 28 U.S.C. § 1292(b) and Stay of Proceedings (“Mot.”
4 [Doc. 57]) should be denied.

5 **LEGAL STANDARD**

6 As this Court has held, courts should grant certification under Section 1292(b)
7 “only in exceptional situations in which allowing an appeal would avoid protracted
8 and expensive litigation” and not “merely to provide review of difficult rulings in
9 hard cases.” *SEC v. Criterion Wealth Mgmt. Ins. Servs., Inc.*, No. 2:20-CV-01402-
10 SPG-JEM, 2023 WL 2372062, at *1 (C.D. Cal. Feb. 1, 2023) (Garnett, J.) (first
11 quoting *In re Cement Antitrust Litig. (MDL No. 296)*, 673 F.2d 1020, 1026 (9th Cir.
12 1981), then quoting *U.S. Rubber Co. v. Wright*, 359 F.2d 784, 785 (9th Cir. 1966)
13 (per curiam)). In evaluating a request for certification under 28 U.S.C. § 1292(b),
14 moreover, the Ninth Circuit holds that the “certification requirements are (1) that
15 there be a controlling question of law, (2) that there be substantial grounds for
16 difference of opinion [as to that question], and (3) that an immediate [resolution of
17 that question] may materially advance the ultimate termination of the litigation.”
18 *ICTSI Or., Inc. v. Int’l Longshore & Warehouse Union*, 22 F.4th 1125, 1130 (9th
19 Cir. 2022) (quoting *In re Cement Antitrust Litig.*, 673 F.2d at 1026). Further, a
20 “controlling question of law must be one of law—not fact . . .” *Id.* (quoting *In re
21 Cement Antitrust Litig.*, 673 F.2d at 1026). And here, the Court’s consistent reliance
22 upon the *factual* disputes between the parties in denying Defendants’ Motion to
23 Dismiss means this Motion should likewise be denied. *See, e.g.*, Order 14, 20.

24 **ARGUMENT**

25 The core of Defendants’ argument concerns the question of “whether the First
26 Amendment protects Disney’s right to choose who will express its artistic message.”
27 Mot. 1. Yet no court has held that media employers have an absolute right to
28 “exclude” actors because of their viewpoints—religious, political, or otherwise. As

1 this Court found, the First Amendment defense has only been applied to casting
2 decisions in “certain, fact specific circumstances.” Order 17. And those factual
3 circumstances are not applicable here. Rather, under the allegations in the
4 Complaint, there are no facts to suggest, let alone establish, that Defendants’ actions
5 were taken because Carano’s speech undermined Defendants’ speech or that
6 Defendants ever made a casting decision because it did not want to “express its art
7 through actors who made widely-publicized statements that the entity deems
8 offensive and harmful to its own artistic expression.” Mot. 2;¹ *see also* Order 14,
9 19. This makes Defendants’ framing of the question they request be certified for
10 appeal, Mot. 2, all the more improper as it misconstrues both the facts in the
11 Complaint and the law applicable to their asserted First Amendment defense.

12 As this Court correctly found, Carano’s Complaint does not itself establish
13 “that Plaintiff’s continued employment by Defendants would inhibit or intrude upon
14 Defendants’ rights to expressive association,” *id.* at 14, and it “lacks allegations to
15 support Defendants’ assertion that Plaintiff’s ‘presence as a prominent actor on *The*
16 *Mandalorian* interfered with [Defendants’] choice not to produce a show associated
17 with her beliefs.’” *Id.* at 20 (quoting Defs.’ Mot. to Dismiss at 19 (“MTD”) [Doc.
18 33]). Indeed, when it came to establishing their affirmative defense at the motion to
19 dismiss stage, “Defendants have not made such a showing,” *id.* at 16, and thus their
20 Motion to Dismiss was properly denied. Defendants’ mere disagreement with this
21 Court’s findings does not create a basis for interlocutory appeal.

22

23

24 ¹ In their Answer, Defendants admit they never made any public statement about any
25 actor on *The Mandalorian* based on their personal social media posts other than
26 Carano. Answer ¶ 177 (Doc. 58). And there is no evidence Defendants chose to fire
27 an actor for political comments on social media until Carano. Indeed, Defendants
28 had no issue with personal, political statements from others, just Carano,
undermining their entire First Amendment defense. Compl. ¶¶ 106, 127-44 (Doc.
1).

1 **I. The Court’s Order Denying Defendants’ Motion to Dismiss Did Not
2 Decide a Controlling Question of Law.**

3 First, the Court’s Order did not “decide” a controlling question of law. To be
4 sure, Defendants claim their Motion to Dismiss was based exclusively on a
5 controlling question of law, and that this Court decided that controlling question
6 when it denied Defendants’ motion. Mot. 3. But in ruling that Defendants do not
7 enjoy an absolute First Amendment immunity from liability, the Court was not really
8 “deciding” a legal question—it was simply applying settled First Amendment law
9 already decided by higher courts. *See* Order 12-14, 21-22. And, in rejecting
10 Defendants’ argument that Carano’s Complaint *itself* establishes Defendants’
11 entitlement to absolute immunity, the Court was, again, not “deciding” a legal
12 question, but simply applying settled First Amendment law to its analysis of the
13 Complaint’s factual allegations. *See id.* at 14-16, 21.

14 In short, the dispute over Defendants’ assertion of its First Amendment
15 defense is one of fact—specifically the lack of allegations in the complaint to support
16 that defense and, given the procedural posture of the case, the lack of other evidence
17 to support that defense. *See generally* Order 14, 20. Because the issues at this stage
18 are factual rather than legal, certification is not appropriate under Section 1292(b).
19 *See ICTSI Or.*, 22 F.4th at 1130.

20 **II. There is No Substantial Ground for Difference of Opinion on the Merits
21 of Defendants’ First Amendment Defense at the Motion to Dismiss Stage.**

22 Second, there is no substantial ground for difference of opinion on the merits
23 of Defendants’ legal position. Here, Defendants rely on the fact that the Supreme
24 Court and the Ninth Circuit “are regularly issuing new precedents.” Mot. 4. Indeed,
25 Defendants pointed out a new precedent in a Notice of Supplemental Authority
26 (Doc. 43). But, of course, not all new precedent is applicable at this stage, as the
27 Court correctly found as to the Supreme Court’s recent decision in *Moody v.*
28 *NetChoice, LLC*, 144 S. Ct. 2383 (2024). Order 22. The mere fact some future

1 opinion may have relevance to this case is not a reason to stay these proceedings or
2 to certify the Court’s Order denying Defendants’ Motion to Dismiss for interlocutory
3 appeal. And, as shown below, none of Defendants’ other arguments establish a
4 “substantial ground for difference of opinion” on the correctness of the Court’s
5 denial of Defendants’ Motion to Dismiss.

6 **A. The *Dale* Deference Standard Requires Defendants to Present
7 Actual Facts to Support Their First Amendment Claim.**

8 First, according to Defendants, both *Boy Scouts of America v. Dale*, 530 U.S.
9 640 (2000), and *Green v. Miss United States of America, LLC*, 52 F.4th 773 (9th Cir.
10 2022), *reh’g en banc denied*, 61 F.4th 1095 (9th Cir. 2023), require dismissal of
11 Carano’s claim based exclusively on their assertion of harm to an unspecified
12 message. Mot. 4-5. Yet, as the Court properly found, that is not the holding of either
13 case. *See Order 13-14, 21-22.*²

14 Initially, and as demonstrated in Carano’s Response to Defendants’ Motion to
15 Dismiss (“MTD Resp.”) (Doc. 37 at 5-6, 12), Defendants never identify what
16 message of theirs was undermined by Carano speaking her mind on important issues
17 of the day. That failure will be fatal to their asserted defense and is as fatal to their
18 current motion as it was to their Motion to Dismiss.

19

20

21 ² While Defendants attempt to distinguish *Roberts v. U.S. Jaycees*, 468 U.S. 609
22 (1984), by claiming that free speech rights are different than free association rights
23 when “a law is used to force individuals to toe the government’s preferred line when
24 speaking (or associating to express themselves) on matters of significance,” they
25 again miss the point that this case has nothing to do with forcing Defendants to say
26 or not say anything. *See Mot. 12 n.3* (quoting *303 Creative LLC v. Elenis*, 600 U.S.
27 570, 600 n.6 (2023)). Rather, the issue here is similar to that in *Roberts*, namely the
28 lack of any evidence that retaining Carano in *The Mandalorian* would create a
“serious burden” on Defendants’ right to free expression. 468 U.S. at 623, 626 (club
failed to show “serious burdens” on expressive association by including women as
full members); *Order 13-14*.

1 Regarding *Dale*, the Court correctly found it was not dispositive, at least at
2 this juncture. In addition to noting the lack of facts to support Defendants' claim
3 "that they engage in expressive *association*," the Court also found that, "at this stage
4 in the litigation, the Court cannot conclude, as Defendants urge it to, that Plaintiff's
5 continued employment by Defendants would inhibit or intrude upon Defendants'
6 right to expressive association." Order 14. Indeed, the Supreme Court made it clear
7 "that an expressive association" cannot "erect a shield against antidiscrimination
8 laws simply by asserting that mere acceptance of a member from a particular group
9 would impair its message." *Dale*, 530 U.S. at 653. That is all Defendants offer here.

10 The *Dale* "deference standard" upon which Defendants claim to rely, and as
11 quoted in Judge VanDyke's concurring opinion in *Green*, merely states: "As we give
12 deference to an association's assertions regarding the nature of its expression, we
13 must also give deference to an association's view of what would impair its
14 expression." *Green*, 52 F.4th at 805 (quoting *Dale*, 530 U.S. at 653) (VanDyke, J.,
15 concurring). Following his citing of *Dale*, Judge VanDyke then reviewed the facts
16 of the case, including Miss USA's specific message and how including Green would
17 undermine that message. *Id.* at 806-07. Yet here, a factual analysis of Defendants'
18 assertion is not possible under the facts as they currently exist. Of course, this does
19 not alter the Supreme Court's clear direction cited above that it takes more than a
20 mere assertion to support such a claim, but actual evidence must be presented,
21 something this Court properly found was (not surprisingly) lacking here.

22 The majority's holding in *Green* does not help Defendants either. While in
23 *Green* there was no "daylight between speech and speaker," the Court here was
24 unable to reach such a conclusion based on the face of Carano's Complaint. Order
25 21-22 (quoting *Green*, 52 F.4th at 781, 802-03). Indeed, there is no evidence to
26 support Defendants' assertion that they had a message in *The Mandalorian* to
27 promote any particular "values" or that having Carano participate would undermine
28 its ability to communicate those values. *Id.* at 14. Accordingly, any "deference"

1 owed to Defendants' asserted message is not due when such an assertion is without
2 any factual support.

3 Defendants' reliance (Mot. 4, 6, 10) on *Moore v. Hadestown Broadway*
4 *Limited Liability Co.*, -- F. Supp. 3d --, No. 23-cv-4837 (LAP), 2024 WL 989843
5 (S.D.N.Y. Mar. 7, 2024), also misses the point. There, as this Court recognized, the
6 court held there is no First Amendment protection for termination of an actor for
7 otherwise protected conduct, as is the issue here. Order 18. Indeed, two other courts
8 in this district have held likewise when evaluating similar claims on a motion to
9 dismiss. *Rowell v. Sony Pictures Television, Inc.*, No. LA CV15-02442 JAK
10 (AGRx), 2016 WL 10644537 (C.D. Cal. June 24, 2016), *aff'd*, 743 F. App'x 852
11 (9th Cir. 2018); Order Denying Defs.' Mot. to Dismiss at 2, *Beneker v. CBS Studios,*
12 *Inc.*, No. 2:24-cv-01659-JFW-SSC (C.D. Cal. Aug. 14, 2024), ECF No. 60 (relying
13 on this Court's July 24, 2024 Order). There is no basis for reasonable jurists to
14 disagree on this point, which (again) makes the Court's decision inappropriate for
15 certification for an interlocutory appeal.

16 **B. Redgrave Does Not Support Defendants' Asserted Defense.**

17 Defendants next argue that this Court held "that the First Amendment does
18 not confer on expressive entities the right to dissociate with performers based on
19 their 'off-the-job political speech.'" Mot. 7. Defendants cite page 19 of the Court's
20 Order,³ but nowhere did the Court make such a broad statement of the law. Instead,
21 the Court rightly noted that there are no facts to support Defendants' claims that
22 Carano's off-the-job comments had any effect on their speech. Order 19, 20, 21.
23

24
25 ³ Defendants may be referencing the following sentence in the Court's Order:
26 "Instead, Plaintiff contends that Defendants fired her in retaliation for off-the-job
27 political speech after attempting to make her renounce those comments and 're-
28 educate' her. (Compl. ¶¶ 30, 75, 77)." Order 19. The Court noted how this was the
same as in *Rowell* and in *Moore*, neither of which found the First Amendment a bar
to a retaliatory discharge claim. *Id.* at 18-19.

1 While Defendants again claim that Carano's comments "plainly" implicate "the
2 message or content of *The Mandalorian*" (Mot. 7 (quoting Order at 19)), they again
3 point to no evidence to support, let alone prove this assertion.

4 Defendants then point to *Redgrave v. Boston Symphony Orchestra, Inc.*, 855
5 F.2d 888 (1st Cir. 1988), as a basis for reasonable jurists to disagree on the Court's
6 holding. Mot. 7-8. Yet, as the Court made clear, not only is any discussion of First
7 Amendment issues in *Redgrave* pure dicta (Order 20), but the opinion is of "little
8 persuasive value at this stage of the litigation." *Id.* *Redgrave* simply does not
9 support Defendants' argument that an entertainment company has an *absolute* right
10 to terminate an actor for any off-the-job speech at the sole discretion of the
11 entertainment company. As this Court noted, Defendants' theory would place no
12 limits on who could avoid laws of general applicability prohibiting discrimination.
13 Indeed, Defendants' theory is "tenuous, at best." Order 17 n.6.⁴

14 As Carano demonstrated in her Motion to Dismiss Response (at 6-8),
15 moreover, the Supreme Court has foreclosed their blanket argument. In *Associated*
16 *Press v. NLRB*, 301 U.S. 103 (1937), the Court held that the Associated Press ("AP")
17 could not fire employees for their pro-union position as there was no showing that
18 their pro-union position effected the AP's ability to publish the news as it saw fit.
19 *Id.* at 132-33. Likewise, the D.C. Circuit Court of Appeals held the same in *Passaic*
20 *Daily News v. NLRB*, 736 F.2d 1543, 1555-56 (D.C. Cir. 1984) (applying these
21 principles to conclude that a newspaper lacked a First Amendment right to fire a
22 columnist based on his off-duty union-related speech). And, as this Court noted, the
23 Ninth Circuit's opinion in *McDermott v. Ampersand Publishing, LLC*, 593 F.3d 950,
24 953 (9th Cir. 2010), provides no support for Defendants' argument either. Order 22.
25
26

27
28 ⁴ For the reasons set out above, Defendants' reliance on *Dale* for this argument is
likewise without merit.

1 Defendants' motion for certification for interlocutory appeal on this ground should
2 be denied.

C. Defendants Misinterpret the Court’s Order Regarding Potential Relief for Their Violation of California Law.

In their third ground for certification, Defendants claim that monetary damages and potential injunctive relief both violate their First Amendment free speech rights. Mot. 9. They again miss the point that they have failed to establish *any* First Amendment right to terminate Carano for her off-duty speech under the facts of Carano’s Complaint. While the Court noted that an order of possible reinstatement, as authorized by the applicable statutes here, *may* not ultimately “comport with the First Amendment,” the Court properly concluded that such a decision did not need to be reached at this stage. Order 19. Because the facts as alleged do not support Defendants’ First Amendment defense, any concern over possible remedies is premature and not grounds to certify this case for interlocutory appeal.

16 Defendants nevertheless point to two inapplicable Supreme Court decisions
17 in support of their argument. First, they cite *Cipollone v. Liggett Group, Inc.*, 505
18 U.S. 504, 521 (1992), to argue that monetary damages are just as likely to modify
19 behavior as injunctive relief. Mot. 9. But *Cipollone* was not a First Amendment
20 case, but rather evaluated the preemption provision of the Public Health Cigarette
21 Smoking Act of 1969. *Cipollone*, 505 U.S. at 521.

22 Defendants then reference *New York Times Co. v. Sullivan*, 376 U.S. 254
23 (1964), “and its progeny” to assert that monetary damages may also “chill speech.”
24 Mot. 9. Of course, *Sullivan* concerned liability for libel based on the newspaper’s
25 publication about a public official. 376 U.S. at 256. Yet here, Defendants offer no
26 basis for comparison to a newspaper. Further, Defendants face liability here for
27 violations of a statute protecting against invidious discrimination, not First
28 Amendment protected speech. Order 19 (“in contrast to *Claybrooks* and *Moore*,

1 Plaintiff's Complaint does not take issue with the message or content of *The*
2 *Mandalorian*"). Indeed, Defendants' reliance on *Moore* only disproves their point,
3 as *Moore* allowed a claim for retaliatory discharge to move forward over the
4 defendant's First Amendment objections. 2024 WL 989843, at *20-21; Order 18.
5 Defendants' argument is simply insufficient to justify certification of the Court's
6 Order for interlocutory appeal.

7 **D. Defendants Again Misinterpret the Court's Order Regarding the**
8 **Application of the First Amendment in the Employment Context.**

9 Finally, Defendants entirely misread the Court's Order by asserting that it
10 relies on a distinction between public accommodation claims and employment
11 claims. Mot. 10. Yet the Court never said its decision was premised on that
12 distinction. *See* Order 20. While the Court noted that neither *Hurley v. Irish-*
13 *American Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557 (1995), *Dale*,
14 nor *Green* were employment cases, Order 12, 21, that was simply to lay out the
15 constitutional principles involved in those decisions. The Court then explained in
16 detail why those holdings were distinguishable and not controlling here—and for
17 reasons going well beyond the distinction between public accommodation and
18 employment claims. *Id.* 12 (*Hurley*) 13-14 (*Dale*), 21-22 (*Green*).

19 To be sure, the Court analyzed *Moore*, *Claybrooks v. American Broadcasting*
20 *Companies, Inc.*, 898 F. Supp. 2d 986 (M.D. Tenn. 2012), and *Rowell*, which
21 involved either retaliatory termination or claims of discriminatory failure to hire. In
22 evaluating those holdings, however, the Court found them either distinguishable (as
23 in *Claybrooks*, Order 17-18), or only partially relevant but not helpful to Defendants
24 (as in *Moore*, *id.* at 18), or contrary to Defendants' position (as in *Rowell*, *id.* at 19).
25 Defendants' request for certification of the Court's Order on this ground simply rests
26 on a mischaracterization of the Court's reasoning and should be denied.

27

28

1 **III. Interlocutory Review and a Stay of Proceedings Would Substantially**
2 **Delay Resolution of the Issues Presented by the Complaint.**

3 Finally, nothing about an interlocutory appeal will expedite or shorten the
4 litigation. Instead, it will only delay the natural order of litigation. *See Tucker v.*
5 *Faith Bible Chapel Int'l*, 36 F.4th 1021, 1034 (10th Cir.), *reh'g en banc denied*, 53
6 F.4th 620 (10th Cir. 2022), *cert. denied mem.*, 143 S. Ct. 2608 (2023). Indeed, rather
7 than being a serious attempt to address a dispositive issue of law, Defendants'
8 motion appears to be an attempt to avoid or delay discovery and an ultimate
9 adjudication of Carano's claims—which will only prejudice her without truly
10 expediting resolution of these claims.

11 **A. Immediate Appellate Review Would Not Resolve the Issues in the**
12 **Case.**

13 Given the lack of facts to support Defendants' First Amendment affirmative
14 defense, as this Court noted repeatedly in its Order, an interlocutory appeal would
15 certainly not resolve this case "in its entirety," (Mot. 12), or even "streamline further
16 legal proceedings before this Court," *id.* at 13. While Defendants claim that this
17 litigation is one "that chills speech," *id.*, they do not even assert how their speech is
18 impacted. As noted extensively above and in the Court's Order, this case is not
19 about Defendants' speech, but rather their discriminatory termination of Carano
20 because of her speech.

21 **B. A Stay of the Proceedings is Not Justified.**

22 Finally, Defendants point to what they claim is "highly intrusive discovery
23 into Disney's expressive choices" with "many [discovery requests] which strike at
24 the heart of Disney's interest in controlling its expression" as a basis for this Court
25 to stay the case. Mot. 13. Yet Defendants forget that it is *they* who asserted a First
26 Amendment defense, and Carano certainly has the right to test that defense and
27 demonstrate that any such assertion is simply a pretext for unlawful discrimination.
28 And, while Defendants complain of Carano's initial written discovery, they fail to

1 mention that two days prior to filing their motion, Defendants served 84 Requests
2 for Production (“RFPs”) on Carano. *See* Ex. A. All this means is that discovery has
3 begun as contemplated by this Court’s standing orders and the Federal Rules of Civil
4 Procedure. Any disputes regarding discovery can be handled in the ordinary course;
5 indeed, responses are not even due for several weeks.

6 Regarding the specific discovery requests of which Defendants complain,
7 they go directly to the issues in the case. First, Defendants complain that Carano
8 seeks to depose “numerous high-ranking Disney officials, including The Walt
9 Disney Company’s former chief executive officer, Lucasfilm’s current president,
10 and *The Mandalorian*’s showrunner.” Mot. 13. Of course, Defendants rely on their
11 former CEO’s statement to support their First Amendment defense (*see* MTD 2, 6,
12 13). Further, they identify three senior VPs, Lucasfilm’s current president (Kathleen
13 Kennedy), and *The Mandalorian*’s showrunner (John Favreau) as witnesses in their
14 Rule 26(a) Initial Disclosures. *See* Ex. B at 2-4. It is odd that they would now claim
15 that a request to ultimately depose these individuals is “intrusive.”

16 Defendants also complain that Carano has served several third-party
17 subpoenas. Mot. 13. Yet two of those subpoenas are to Carano’s *own* former agent
18 and public relations firm, both of which are also included in Defendants’ Rule 26(a)
19 Initial Disclosures. *Compare* Mot. Ex. 2 at 37-58 (Doc. 57-3) *with* Ex. B at 3-4 here.
20 Further, Defendants have requested that Carano produce documents between them
21 and these entities as part of discovery. *See* Ex. A (RFPs 9-13).

22 Defendants also complain about Carano’s Requests for Admission asking if
23 social media posts from other *Mandalorian* actors “align with Defendants’ values.”
24 Mot. 14 (quoting Pl.’s Reqs. for Admission 5-8 (Mot. Ex. 1 at 33 [Doc. 57-2])). Yet
25 Defendants’ entire defense is that such a claim justifies dismissal under the First
26 Amendment. MTD 13-14, 16. Such requests are clearly relevant, and truthful
27 answers will likely demonstrate the lack of merit to Defendants’ asserted defense.
28

1 Defendants next complain about having to produce contracts of other
2 comparable actors in response to Request for Production No. 52. Mot. 14. Yet such
3 a request goes directly to Carano’s claimed damages and is clearly relevant here.

4 Finally, Defendants complain about requests for information related to
5 political contributions in Request for Production No. 58. Of course, given that
6 Defendants admit to treating Carano differently because of political speech they
7 frequently describe as “conservative,” discovery as to Defendants’ political bias is
8 clearly relevant. Contrary to their assertion, such information is discoverable under
9 *Perry v. Schwarzenegger*, where the Ninth Circuit created a balancing test for
10 discovery of political affiliations and did not prohibit all such discovery. 591 F.3d
11 1147, 1161 (9th Cir. 2010). Further, Defendants reference (Mot. 14) to *Americans*
12 *for Prosperity Foundation v. Bonta*, 594 U.S. 595, 611-12 (2021), is inapplicable
13 because there the issue was the mandatory disclosure of donor lists to the
14 government, an issue not applicable here.

15 Again, should disputes arise regarding the scope of discovery, those can be
16 addressed in the normal course and do not justify a stay of these proceedings.

17 CONCLUSION

18 At this point, Defendants have offered no evidence to support, let alone prove,
19 that they terminated Carano for reasons protected by the First Amendment. And,
20 while it is doubtful they ever will, the mere suggestion that they can do so is not
21 sufficient to justify staying these proceedings and certifying this Court’s Order
22 denying their Motion to Dismiss for immediate interlocutory appeal. The only
23 established facts at present are that Defendants terminated Carano and took steps to
24 destroy her career for discriminatory reasons prohibited by California law. With no
25 evidence that Defendants’ speech was affected by Carano’s appearance in *The*
26 *Mandalorian*, the First Amendment provides no sanctuary to Defendants—at least
27 under the facts alleged in the Complaint. As this Court found (Order 23), Carano’s
28 Complaint clearly does not “admit[] all the ingredients of an impenetrable defense”

1 based on the First Amendment. *Durnford v. MusclePharm Corp.*, 907 F.3d 595, 604
2 n.8 (9th Cir. 2018) (citation omitted). Accordingly, Defendants' Motion should be
3 denied.

4

5 Respectfully submitted,
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25

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26 Dated: September 4, 2024
27
28

CERTIFICATE OF COMPLIANCE

2 The undersigned, counsel of record for Plaintiff Gina Carano, certifies that
3 this motion response contains 4,331 words, which complies with the established
4 word limit of Local Rule 11-6.1.

6 | Dated: September 4, 2024

/s/ Gene C. Schaerr
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